IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 567 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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NEW INDIA ASSURANCE CO. LTD. - Appellant(s)
Versus
KUNDANBEN WD/O BABULAL KADIYA & 7 - Defendant(s)

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Appearance :
MR RAJNI H MEHTA for Appellant(s) : 1,
MR SANDIP C SHAH for Defendant(s) : 1 - 4.
MR VS PARIKH for Defendant(s) : 5 - 8.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 21/08/2006

ORAL JUDGMENT

1. By way of this appeal the appellant has challenged the judgement and award dated 11.08.1983 passed by the Motor Accident Claims Tribunal (1), Ahmedabad, in M.A.C.P. No. 44 of 1982 whereby the petition was partly allowed.

2. The short facts of the case are that on 23.05.1982 at about 7.45 a.m. the deceased was crossing the road from north to south that is from Devsha's Pada (Khancha) and at that time the scooter

bearing Registration No. G.R.L. 3199 belonging to original opponent No.1 came in full speed and knocked down the deceased on the main relief road. Thereafter, the deceased was immediately taken in to V.S. Hospital where he expired during treatment on 25.05.1982. Therefore the legal heirs of the deceased have filed the claim petition claiming Rs. 85,000/- by way of compensation for the death of the deceased. The Tribunal after hearing the parties passed the judgment and award which is under challenge in this appeal.

3. The learned advocate for the appellant has relied upon Exhibit 51 and 88 which shows that the owner of the scooter is Mr. Jayantilal Bhimajibhai Thakkar and Mr. Maheboobkhan Inbrahimkhan Pathan without permission of his brother Mr. Yakubbhai Ibrahimbhai Pathan has taken the scooter from the garage. He did not possess valid licence while driving which is a serious crime.

4. Heard I have gone through the judgement and award of the Tribunal from the record it appears that the driver of the vehicle has not valid licence, therefore Insurance Company is not liable to pay the

compensation. The issue involved in this appeal is clearly covered by the decision of the Division Bench of the Supreme Court in the case of ***National Insurance Co. Ltd. Vs. Kusum Rai and others reported in 2006 ACJ 1336*** wherein it is held in para 14 as under:

> "Although, thus, we are of the opinion that the appellant was no liable to pay the claimed amount as the driver was not possessing a valid licence and the High Court was in error in holding otherwise, we decline to interfere with the impugned award, in the peculiar facts and circumstances of the case, in exercise of our jurisdiction under the Article 136 of the *Constitution of India* but we direct that the appellant may recover the amount from the owner in the same manner as was directed in Nanjappan, 2004 ACJ 721 (SC)."

5. In view of the above, the Insurance Company cannot be held liable to pay the amount of compensation in the present case as the driver was not holding a valid licnece at the time of the accident. The award passed by the Tribunal qua liability of insurance company is therefore erroneous and is required to be modified accordingly.

6. In the premises aforesaid the appeal is allowed

accordingly. The F.D.R. lying with the tribunal shall paid to the appellant. It is made clear if it is withdrawn by the original claimants, it will not be recovered. It shall be open for the insurance company to recover the amount from the owner. The award of the tribunal is modified. No order as to costs.

(K.S.JHAVERI, J.)

Suresh*